

**APPROVED**  
**MINUTES**

**STATE ADVISORY COUNCIL ON THE EDUCATION OF CHILDREN WITH**  
**DISABILITIES**

**December 1, 2006**  
**Carmel Educational Service Center**  
**Indianapolis, IN**

**ADVISORY COUNCIL MEMBERS PRESENT:**

Bob Marra, David Schmidt, Becky Kirk, Julie Swaim, Karol Farrell, Kathy Mears, Dawn Downer, John Nally, Gary Bates, Cheryl Shearer, Rebecca Kirby, David Geeslin, James Hammond

**ADVISORY COUNCIL MEMBERS NOT PRESENT:**

Steve Tilden , Christina Endres, Mary Ramos, Bessie Henson, Rich Burden; Lilia Tentinty, Marcia Johnson, Jane Swiss, Stephanie Beasley, Bret Lewis, Cathleen Hardy Hansen, Cynthia Diamond, Martha Farris

**DEPARTMENT OF EDUCATION (DEL) STAFF PRESENT:**

Paul Ash, Nina Brahm, Becky Reynolds, Alexandra Curlin, Kylee Bassett

**GUESTS:**

Sharon Knoth

**VISITORS**

Susan Lockwood (IDOC), Mary Jo Germani, Jennifer Akers (Parent), Rylin Rodgers (Parent), Loui Lord Nelson (R.A.I.S.E.), Marilyn Edwards (ISTA)

**INTERPRETERS:**

Randy Nicolai, Kellyeanne Norrod and Mary Alka

**MEETING**

D. Schmidt opened the meeting at 9:45 a.m.

## **MINUTES**

The minutes from the November 3, 2006, meeting, were approved as a correct document.

## **BUSINESS**

David Schmidt introduced a proposal to add a Thursday afternoon meeting and earlier start time on Friday. He then opened for discussion.

B. Kirk said that she would be able to attend a Thursday meeting but would have to end early and not go into the late afternoon.

G. Bates added that it would be hard for him to break away twice a month on Friday but can attend on Thursday and Friday.

John Nally said Thursday evenings are best for him but not day during the day.

James Hammond suggested a Sunday meeting or a conference call instead of an actual meeting.

K. Farrell said that she is unable to attend Thursday during the day but she can meet Thursday evenings. She said that she would like to offer that people respect the time for meetings. If everyone arrived punctually then SAC could get more accomplished. K. Farrell added that she would be willing to go later on Friday. K. Farrell offered MSD of Washington Township as a more central meeting location, should the Council wish to move locales.

G. Bates stated that he would not mind going to a Sunday and Monday meeting, as long as they are consecutive.

B. Marra inquired if the Friday meeting is the issue.

K. Farrell said that a Friday and Saturday meeting may be an option.

J. Nally asked about how the SAC should be moving forward with the revision and asked if there was too much discussion of the details? If there is an area where there isn't any disagreement; should it be discussed? B. Kirk indicated that there are times we don't know we disagree until someone brings up a point that triggers a thought. B. Marra stated that he would like to discuss two big issues and then add in smaller issue at each meeting to help facilitate the processing through the entire rule. The discussions may be shorter or longer than anticipated.

G. Bates concurred and stated that we do need to meet more often like the Friday and Saturday or Sunday and Monday. D. Schmidt suggested starting earlier on Friday and trying to go later.

B. Marra asked for public comment. R. Rodgers, a parent, stated that a Saturday meeting would provide the public with more opportunity to attend the meetings. R. Rodgers added that electronic review of the rule would prohibit or limit the amount of public input

B. Marra stated that he thinks that starting earlier on Friday and push to go later. He then suggested going to a second day later on.

D. Schmidt suggested in January to meet at 8:30 a.m. and go as late as we can.

J. Swaim said that as a parent it is very tough to get to the meeting that early.

B. Marra asked if a change in location would help. Discussion was to change the meeting from Carmel Clay to Washington Township or go to a more central location.

J. Swaim said that members need to be put on notice that if they miss more than three meetings in a row then they should be taken off the council. B. Marra replied that by statute we only need 17 members and we have 28 so we could implement a rule that after missing "x" number of meeting you are off the council. That is the council's prerogative.

D. Geeslin suggested having additional discussion after lunch and moving on to rule discussion.

#### **PUBLIC COMMENT (Audience comments, if any)**

D. Schmidt made note to copies of comments sent by e-mail that were located at the back of the room.

No comments from visitors were made.

#### **ARTICLE 7 DISCUSSION**

SAC discussed the following issues:

##### **511 IAC 7-21-1: Parent and community participation**

B. Marra said to please note that P.L. 221 and NCLB do not require schools to involve parents in decision making.

B. Marra asked for SAC to consider the language of “may” and the goals for the parent group.

G. Bates stated that the language that was discussed at the November meeting was faulty as the public agency is not required to afford public input on school decisions.

C Shearer asked with regard to the one percent of money that comes to the school by Title I. B. Marra indicated that he is not aware of what one percent would equate to.

K. Farrell said that she thinks that the four goals are good points and agrees with the language.

J. Hammond said that a fifth goal should be added to say “creating other methods and means for parent participation and decision making.”

B. Kirk said that it may be better than having a segregated parent group. K. Farrell said that she supports B. Kirks statement. B. Kirk said that if parents are included then it will help them to feel more part of the group.

D. Schmidt asked for motion to keep as is or to add (5)

R. Kirby and J. Hammond discussed the potential of a #5 that speaks to adding language which may establish other means. C. Schearer concurred that it could be non-traditional ways and methods for parent participation and decision making.

J. Swaim and K. Farrell asked for clarification with goal #4. J. Hammond said that you have people in the welfare or public assistance system that may have interagency agreements that help facilitate family involvement. Perhaps #4 is not necessary or needs to be moved elsewhere.

J. Swaim motioned that goal #4 be deleted. C. Mears seconded.

Unanimous vote to change language.

Motion carried.

D. Geeslin stated that #4 is part of what is required by the case conference committee and IEP.

B. Marra asked for more discussion from R. Kirby on why she wants “must” instead of “may” in the first paragraph. B. Marra indicated that the issue from his perspective was that although PACs tended to start out strong then eventually fell apart due to lack of participation. By placing the “may” into the regulations we

are encouraging a PAC but we are not mandating a PAC. B. Kirk asked if we could put in a support statement that it is recommended by the DEL that a PAC be established. B. Marra stated that schools are encouraged to have a PAC. There should not be a requirement to dedicate resources to a PAC, that should be a local decision. There are in-kind resources and other activities/events where families are involved and resources are set-aside for speakers. There should not be a requirement to set aside 1% of the Part B dollars for a PAC or parent activities. It should be a school district responsibility for ensuring parent involvement and not a special education planning district responsibility. This language encourages family participation in those general activities.

K. Farrell moved that we accept the language of “is encouraged to,” rather than “may,” add the language of “is not limited to,” and delete #4. Seconded by J. Hammond.

Unanimous vote to accept new language.

Motion carried.

### **511 IAC 7-21-5 Facilities**

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B. Marra stated that by adding the term public agency we include public schools, charter schools and non accredited non-public schools, but we cannot include non-accredited non public schools.

J. Hammond motioned to approve the term “public agency.” R. Kirby seconded.

Unanimous vote to accept new language.

Motion carried.

### **511 IAC 7-21-7 Transportation**

B. Marra explained the changes here are the addition of charter schools and the language that the student’s case conference committee can specify that transit time exceeds that of his/her non-disabled peers. There is also a statement at (c) where a student-specific justification must be documented in the IEP. The ISTAR case conference committee tool has this in it; but that is ‘best practices’ and not mandated.

K. Farrell asked how travel time is calculated. B. Marra said you have to look at the average for all students of a comparable grade. K. Farrell inquired if this extra time would become a complaint issue. B. Marra said that as a state regulation this is an issue.

B. Kirk asked whether it is possible to put it into the IEP but word it along the lines of: After transportation schedules have been established, the committee must consider transit times. B. Marra indicated this would be extremely unmanageable to mandate that the CCC be reconvened just to address this – as transit times are always evolving and changing.

K. Farrell moved to put in charter school, remove IEP and add “record”. K. Mears seconded.

Unanimous vote to change language.

Motion Carried

### **511 IAC 7-21-8 Medication administration**

B. Marra stated that the school cannot require a parent to obtain a prescription for medication for a student as a condition for attending school.

B. Marra added that additional language helps to open discussion that a student needs to be on medication.

G. Bates asked if there have been schools that have been doing this. B. Marra said yes this has happened and that there has been legislation to try to let this happen.

C. Shearer stated that many teachers are fearful of even discussing this issue for fear it would hold the school financially responsible.

J. Hammond asked with regard to HIPPA. B. Marra said that this is covered under FERPA.

K. Farrell moved to accept the proposed federal language with additions to this section of the rule. C. Shearer seconded

Unanimous vote to accept language.

Motion carried.

### **511 IAC 7-20-9 State and local assessments**

B. Marra explained that these formats are in code at 511 IAC 5-2-3.5 and has been approved by the State Board of Education. So, if the Council wishes to change this language it would be more involved than merely removing it from Article 7.

D. Schmidt asked if, according to (g)(1), he had a student that has failed classes numerous times would that be evidence of a cognitive disability. K. Farrell said no, not in her opinion. B. Marra concurred and added that the Division of Exceptional Learners tries to triangulate the data for each individual student: the label of the child, the test data for the child and the IEP goals and objectives.

K. Farrell moved to accept the proposed language. K. Mears seconded.

Unanimous vote.

Motion carried.

### **511 IAC 7-19-1: Special education for students in private schools**

B. Marra presented a slide presentation to be viewed and discussed over lunch. B. Marra said he does not feel that today would be a good day to vote on this rule but, encourages discussion on the issues.

B. Marra said that if you are in a private school it does not change the right for the parent to go back to the LEA for evaluation. That LEA does have to evaluate the child.

G. Bates asked with regard to how “some service” is defined. B. Marra said that there is no requirement that the LEA has to provide all services for a student in a private school.

J. Hammond asked who would be the person that articulates these decisions. Is it the local director of special education? K. Farrell said that some planning districts in Marion County have selected one person to attend the non-public school case conference committee meetings and communicate with the home-school LEA.

B. Marra explained that the federal funding formula is based on the 1998 Child Count data and a formula that builds in Census and Poverty. If you are a district with declining enrollment you are probably ‘OK’ whereas a district that is increasing or maintaining (with inflation) it could impact the school. ISBVI, ISD and Charter Schools are a bit different because they don’t have a ‘catchment area’.

D. Geeslin indicated that this is true, they do provide services and supports to the LEAs. C. Shearer asked how Charter Schools generate money. B. Marra explained that they do get a December 1 Count (as do ISBVI and ISD) but there is a Charter School Formula that factors in (and then ISBVI and ISD have a line item from the Indiana General Assembly). J. Hammond asked about home school students. B. Marra indicated that the LEA treats a home school student the same as they do a private school student.

B. Marra said that a discussion of what a 'meaningful consultation' is and what is 'timely consultation'. B. Marra added that consultation has to take place between the school and the private school but there is also a consultation that has to take place between the LEA the private school and the student's parent.

K. Mears stated that 80% of the schools in the Archdiocese have a licensed special needs teacher. If the school already has a certified staff member, then the services offered should be different than the services offered in a school that does not have a special needs teacher on contract. B. Marra said that he believes the service plan for non-public schools should reflect the services offered during the 'timely and meaningful consultation'. The consultation between the private school and the public school is different than the 'consultation services' provided to a student who attends the non-public school. It gets a bit confusing because there are two consultations referred to when speaking about non-public schools.

G. Bates asked what recourse the private school has if the public school does not provide what the private school needs. B. Marra said that there was a change in the federal language. B. Marra said that the private school now has the right to file a complaint through the IDOE.

K. Farrell asked with regard to the allowable expenses that can be calculated in the proportionate share? Can administrative costs be calculated? A. Curlin said that 300.133 explains proportionate share. N. Brahm added that it can also be found on page 15 of the mark-up.

B. Marra asked that the council consider DEL forming a committee representing both non-public and public schools to discuss the issues and then bring a summary back to council at a later date.

B. Marra added that once the LEA has expended their proportionate share their obligation for the school year is fulfilled under federal requirements. What the commitment was when this was brought to the Indiana general assembly was that every child would get a portion of the proportionate share. B. Marra said that this money could be spent on only one child if the federal regulations were followed. K. Farrell asked whether the state has the authority to advise a local school corporation that they do not have to take the APC funds generated and then incorporate those funds into the proportionate share. K. Farrell advised that we have to keep in mind that the private school has to take responsibility for enrollment of a special education child. K. Mears said that this is an issue because a lot of the money is being spent on consultation rather than services for students.

J. Hammond asked if there is data that shows that there is more money spent on a general education student versus a special education student. B. Marra said



that there is no state law that says that they have to spend the money on special education children because it goes into a general fund. B. Marra said that the school would have to consult with the home school students individually or as a group. K. Farrell said that she put an ad in the newspaper to advise of the home school of these consultations.

J. Swaim and K. Mears asked if we couldn't articulate that the non-public school must be accredited in order to fall into this rule. B. Marra indicated that it is because the state has not defined what a school is. J. Swaim asked if we could require a school to be in the state-assessment system in order to be eligible. K. Mears asked if we couldn't require a school to be accredited to be eligible. B. Marra indicated that he and his staff will look at this issue.

B. Kirk said that if a school decides to have a meaningful consultation with all the private schools, for example if there were ten schools, do they all receive the same services. K. Farrell said that it depends on what the school dialogue results are; those who have a teacher may not need the services. K. Farrell said that some private schools should not be penalized because they are doing what they are supposed to do rather than others who are not.

J. Nally asked if it is possible to have the school corporation spend more than their proportionate share. Does the school corporation have the authority to determine if they go beyond their proportionate share. K. Farrell said that yes you could do that.

K. Mears said that there is an LD teacher that the school has hired to go into the private schools. If a non-public school does not hire the necessary staff to serve the unique learning needs of children with disabilities, does the LEA have to hire staff for that non-public school? B. Marra said yes, you could...but many do not send them into the non-public school. A large majority of LEAs provide services by bringing the child to the public school and then sending them back to the non-public school or by providing consultative services to the non-public school teacher serving the child. G. Bates indicated that he has no problem with the requirement to work with non-public schools that are accredited; he has an issue with the requirement to serve non-accredited schools. B. Marra indicated that the complaint with the DEL can only be on the meaningful consultation, the evaluation, and the eligibility determination...not on the services received.

D. Geeslin asked if a deaf student is in a private school does the private school have to provide an interpreter. B. Marra said that no, not the private school but the LEA may elect to provide those services. B. Marra added you have to tell the parent about FAPE but it could be different at another LEA. Because you think it looks like FAPE it may not to another school.

B. Marra asked council again to consider the proposal of a committee with representatives to discuss these issues.



## **511 IAC 7-29-1: Suspension**

B. Marra stated that the Federal language states that 'school personnel' may remove the student. Rather than trying to define school personnel, the Indiana regulations specify that the principal or his/her designee have the authority to remove the child from his/her educational services.

At (i) we merely opened the language up to more flexibility by allowing it to be the student's special education teacher or any other teacher working with the student. C. Shearer asked if it should be "appropriate teacher." A. Curlin said that is not in federal law but can be changed to better understand. B. Marra said that it says at least one of the student's teachers or it can be more than one. K. Farrell said that one would hope that the school would make the best decision as to which teacher would attend the meeting. J. Swaim stated that she liked the language because if the special education teacher is not needed it allows the teacher to serve the children at hand. B. Marra said that this will help the student more because it would be a teacher that is with that child more.

J. Nally asked why is suspension is removed in (i) but not in (h). A. Curlin stated that the Federal regulations gave guidelines as to which suspensions count toward the 10-days and which do not. In IDEIA, page 46715, 3<sup>rd</sup> column, first discussion question this whole process is discussed.

G. Bates said if you do an in-school suspension and the child is in a self contained classroom then would that be considered an out-of-school suspension? How can you do an in-school suspension in a self contained room? B. Marra said that if you place it in the students IEP then you would have to either count it toward the ten days or be in violation. C. Shearer asked the difference between being in in-school suspension and out of school suspension. B. Marra said you have to look at the pattern of removals. The real question that should get asked is whether the suspensions have an effective approach to correcting the behavior.

D. Downer asked if they are in in-school suspension is their work graded? B. Marra said that is a local level decision. B. Marra added if you want it to not count as an actual day of suspension then it should. If the assignments are not graded and counted toward the student's fulfillment of the course requirements then you are moving into a grey area where the in-school suspension is counting toward the ten (10) cumulative days. This might be why (h) is speaking to progress in the curriculum. Taking away the student's ability to socialize with peers is a punishment. D. Downer supports that (f)(3) stay in. B. Marra stated that removing them from education is not the effective discipline. But to remove them from the class would be appropriate.

J. Hammond asked whether this would impact school funding. B. Marra indicated that no, this has no effect on funding. What it tells the school is that you can discipline the child but not remove them from their educational program.

At (n) the public agency must notify the parents of its decision to make a removal that constitutes a change of placement of the student on the date on which the decision to make a removal that constitutes a change of placement is made. The public agency must also provide the parents with the notice of procedural safeguards.

K. Farrell asked if this has to be done via a case conference since it is a change of placement. A. Curlin indicated that when on the 11<sup>th</sup> day you must inform the parent and you must have a case conference committee meeting if it is a change of placement. G. Bates asked if the school had to convene on the 11<sup>th</sup> day. A. Curlin said that you are going to have to have a case conference committee to discuss what will happen; so hopefully they will be looking ahead and convening a meeting prior to the 10<sup>th</sup> day.

D. Schmidt asked a question with regard to functional behavior assessments. A. Curlin stated that if they have already had one, they do not need another. D. Schmidt added that we have suspensions, removals and expulsion. Alex replied that sometimes students were being removed but not being counted as a suspension.

K. Mears asked for a definition of 'serious bodily injury'. It comes from a different federal statute. It will appear in Rule 17 of Article 7 (the definition rule). The Federal law permits the schools to use 45 instructional days so we moved from calendar days to instructional days. G. Bates likes the change but also has a question regarding bringing a weapon to school and the mandatory one-year expulsion. It is a state law that the child must be expelled for one year if they bring a weapon to school. The day you bring the weapon to school you are moved immediately to an IAES, so on the 46<sup>th</sup> day when the child leaves that IAES the school must still provide educational services. K. Farrell asked if the child brings a weapon to school, they are immediately suspended and referred for expulsion but can they be moved to an IAES without parental consent/permission? B. Marra indicated that it is what the Feds are allowing; but we need to change Article 7 to allow for this. The Federal language does not require parental consent for a change in placement. In effect, you would move the child into an expedited due process hearing if a weapon is brought to school. On page 46722 in IDEIA is a definition of serious bodily injury.

R. Kirby asked if we are trying to be consistent with the use of instructional versus calendar? B. Marra stated that the Feds are very distinct in that some are instructional days and some are calendar days. We do not want to use the terms interchangeably so the Council needs to be deliberate with the choice of words selected.

B. Marra stated that he would like the council to consider the following language: (d) the independent hearing officer can make an interim placement. At (b) we left it as the local director of special education or his/her designee. At (e) there is language requiring the school to take immediate corrective action if they determine they have not been implementing the IEP or there is other fault on their behalf. At (g) it is all three parties (the parent, the public agency and relevant members of the case conference committee) that make the determination. An expedited due process hearing will be discussed in detail at upcoming meetings of the SAC. It used to be a 10-day timeline that was completely unmanageable; it is now a 30-day timeline.

B. Marra stated for review of SAC that for students not yet determined eligible, at (b) the parent could have expressed their concern in writing to any supervisory or administrative personnel or to a teacher of the student. The oral response has been removed, it must be written.

B. Marra requested that the vote on this language wait until there are more members in attendance. B. Marra asked if the council members present were in agreement with the changes? The members that were in attendance agreed on the language.

#### **ARTICLE 7 COMMENTS FROM THE PUBLIC**

No comments were made.

#### **STATE PERFORMANCE PLAN/ANNUAL PERFORMANCE REPORT (SPP/APR)**

The component P. Ash shared with council is from the Federal website and the Advisory Council serves as Indiana's stakeholder group. There are 20 indicators on the SPP and Annual Performance Report (APR). One form that deals specifically with ISTAR, ISTEP and Accommodations is an 18 page form that must be completed for compliance with this component. The first year we submitted; we received approval and this year is a follow-up. From now until 2012 each state must prepare and submit an APR to the US Department of Education by February 1<sup>st</sup>. The data is applicable to the last school year and some of the data was not due to be submitted until October 31<sup>st</sup>. The report is on the DEL website under the link for Monitoring under State Performance Plan (SPP). The SPP and APR are basically state report cards.

D. Schmidt asked with regard to feedback from the video conference council had with the Feds. B. Marra indicated that the report had recently been received and that he would share the results with council at the January meeting. P. Ash indicated that the Office of Special Education Programs (OSEP) also posts all reports on their website. The report was received on November 27, 2006.

C. Shearer stated that she recently received a report that indicated our state has been especially responsive to the needs of students with disabilities.

#### **OTHER BUSINESS**

D. Schmidt reminded everyone that the next meeting was on January 12, 2007

The SAC agreed that the meeting on January 12, 2007 will begin at 8:30 a.m. and that the ending time would be extended. At that time the need for additional meeting dates will be discussed.

**MEETING ADJOURNED AT 2:45 P.M.**